

Cathy Reynolds At Large
Susan Barnes-Gelt At Large
Dennis Gallagher District 1
T. J. "Ted" Hackworth District 2
Ramona Martinez District 3
Joyce Foster District 4
Polly S. Flobeck District 5
Susan Casey District 6

CITY COUNCIL

City and County of Denver



William C. Himmelmann District 7
Hiawatha Davis, Jr. District 8
Deborah L. Ortega District 9
Edward P. Thomas District 10
Allegra "Happy" Haynes District 11
John Bennett Director
Ann Miodzeniec Assistant Director

ROOM 451 • CITY & COUNTY BUILDING
DENVER COLORADO • 80202
PHONE: (303) 640-3012
FAX: 640-2636

March 29, 1996

DOCKET FILE COPY ORIGINAL

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RECEIVED

APR 1 1996

FCC MAIL ROOM

Dear Mr. Caton:

The enclosed is submitted on behalf of the City and County of Denver, Colorado ("City") to be included as part of the Comments sought by the Federal Communications Commission in its Notice of Proposed Rulemaking, CS Docket No. 96-46. The City's Comments pertain to local government issues involved in the implementation of Open Video Systems.

The original and nine (9) copies are enclosed. Please contact me at the above address and telephone number if additional information is needed to properly evaluate the enclosed materials.

Sincerely,

A handwritten signature in cursive script, reading "Hiawatha Davis, Jr.", written in dark ink.

Hiawatha Davis, Jr.
City Council District #8 and
Vice Chair, City Council Special Projects Committee

Enclosure

cc: Larry Walke, Cable Services Bureau, FCC
International Transcription Services

No. of Copies rec'd
List ABCDE

029

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Implementation of Section)
302 of The Telecommunications)
Act of 1996)

Open Video Systems)

In the Matter of)

Telephone Company-)
Cable Television)
Cross-Ownership Rules,)
Sections 63.54-63.58)

DOCKET FILE COPY ORIGINAL

CS Docket No. 96-46

RECEIVED

APR 1 1996

FCC MAIL ROOM

CC Docket No. 87-266
(Terminated)

COMMENTS OF THE CITY AND COUNTY OF DENVER, COLORADO

Alonzo Matthews
Manager
General Services Administration

City and County of Denver
1330 Fox Street
2nd Floor
Denver, CO 80204

Deborah L. Ortega
President
City Council

Hiawatha Davis, Jr.
City Councilman and
Vice Chair, Special Projects Committee

City and County of Denver
City and County Building
Denver, CO 80202

March 29, 1996

TABLE OF CONTENTS

	<u>Page</u>
I. SUMMARY AND INTRODUCTION	1
II. DISCUSSION	4
A. OVS Operators Should Provide Existing And Future PEG Capacity, Facilities, Equipment And Operational Support That Is The Same Or Equivalent To That Provided By Incumbent Cable Operators	4
B. PEG Services Should Be Provided To All Subscribers To The OVS System Regardless Of The Other Programming That They Receive	6
C. Cable Operators Should Not Be Allowed To Convert Their Cable Systems Into OVS	7
D. Local Governments Must Have A Role In The OVS Certification Process To Ensure That Local Communication Requirements Are Met	8
E. System Technical Considerations Should Neither Prohibit Access For Existing Services Nor Inhibit Development Of Future Services	9
III. CONCLUSION	10

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section)	CS Docket No. 96-46
302 of The Telecommunications)	
Act of 1996)	
)	
Open Video Systems)	
)	
In the Matter of)	
)	
Telephone Company-)	CC Docket No. 87-266
Cable Television)	(Terminated)
Cross-Ownership Rules,)	
Sections 63.54-63.58)	

COMMENTS OF THE CITY AND COUNTY OF DENVER, COLORADO

I. SUMMARY AND INTRODUCTION

On March 11, 1996, the Federal Communications Commission ("FCC" or "Commission") released its Notice Of Proposed Rulemaking in CS Docket No. 96-46 ("OVS NPRM") which, among other things, requests comments on implementing the provisions in the Telecommunications Act of 1996 ("1996 Act") that pertain to Public, Educational and Governmental ("PEG") access obligations for Open Video System ("OVS") operators; whether cable operators should be permitted to become OVS operators; and the OVS certification process. The City and County of Denver, Colorado ("City") firmly believes that, at a minimum, all existing and future PEG services available to cable television subscribers must also be provided to all OVS subscribers. Additionally, the Commission's rules should be flexible enough to allow cities and OVS operators to work together to establish new enhanced services as community needs may dictate. The City further believes that cable

operators should not be allowed to convert their systems into OVS because this will decrease intersystem competition and will reduce the prospects for vigorous competition, both of which would be contrary to the primary intent of the 1996 Act. Regarding the OVS certification process, local governments must have a role in order to ensure that critical local communication requirements, such as the dissemination of local news, information, educational services and live governmental proceedings, are met.

The City is an interested party in this proceeding for a variety of reasons. First, as the City previously indicated to the FCC in its Comments in the Third Further Notice of Proposed Rulemaking in CC Docket No. 87-266 (dated December 16, 1994), it acts both as a PEG programmer and as a representative of other PEG programmers through its role as the franchising authority for Denver. Over 244,660 City and County of Denver homes are passed by the City's cable television franchisee, Mile High Cable Partners, L.P., d.b.a. TCI of Colorado, Inc. ("TCI"). Over 109,400 of these homes subscribe to cable television and have access to seven (7) PEG access channels. These seven (7) channels include three (3) public, two (2) educational, and two (2) governmental offerings. The public channels are programmed and managed by Denver Community Television (DCTV), a non-profit organization. The educational channels are programmed by the Denver Public Schools (DPS) and several Higher Education institutions. The governmental channels are programmed by the City's Office of Television Services.

Second, the incumbent cable operator, TCI, supports the provision of PEG services beyond simply the allocation of channel capacity. Specifically, TCI provides \$500,000 annually in operational support and capital equipment funding, and previously provided

several million dollars worth of facilities and equipment such as master control facilities, production studios, mobile productions vans, test equipment and building wiring.

Third, the programming provided over the PEG channels is diverse and is important to the Denver community. For example, governmental programming includes live governmental proceedings, descriptions of City services, news programs, and live call-in shows on topics of critical interest that allow the active participation of Denver subscribers. Educational programming includes Higher Education telecourses that effectively extend the educational programmers' campuses into the entire community. Equally important, DPS is able to cablecast telecourses, live school board meetings, and student-produced programming to a greatly expanded audience through its PEG access channel.

The public as a whole also benefits greatly from the channels specifically devoted to public access because they are able to both view, and participate in the production of, the programming on these channels. This includes news, education, and information programming that is community-oriented, community-based, and produced with a great amount of volunteer participation.

Fourth, the current Local Exchange Carrier ("LEC") serving the City, US West, has been active in pursuing video dialtone ("VDT") operations. At one time, US West had applied to the FCC to provide VDT service to portions of the City. It is certainly possible that US West will also pursue OVS operations and that Denver could be one of the near-future OVS roll-out areas.

Finally, the City is at the center of many changes in the telecommunications industry. The Denver metropolitan area serves as the headquarters for US West, a number of large cable Multiple System Operators ("MSOs") and a number of other telephony operations, as

well as serving as the transmission point for a number of Direct Broadcast Satellite ("DBS") operations. Because of this, the City, as well as any local government, understands the significant impact that the implementation of OVS will have on the cable and telecommunications industries, the City and its citizens. Accordingly, the City believes that local governments can play a critical role in the implementation of OVS rules that will ensure that this impact is positive.

II. DISCUSSION

The City believes that the following elements must be incorporated into the Commission's rules regarding the implementation of OVS in order to ensure that the public interest is properly served.

A. OVS Operators Should Provide Existing And Future PEG Capacity, Facilities, Equipment And Operational Support That Is The Same Or Equivalent To That Provided By Incumbent Cable Operators

As discussed in the City's December 16, 1994 Comments, under the cable television model, PEG programmers gain access to the system at no charge for the capacity, including both reverse path access for transmission to the headend and access to the downstream subscriber network for transmission to subscribers. In most instances, these programmers are also supported with facilities, equipment and operational funding by the cable operator. In the majority of cases, this is the limit of support for PEG programmers and, consequently, many channels have very tight operating budgets. Accordingly, it is only by establishing an equivalent framework for the provision of PEG services on OVS systems that will ensure that PEG programmers are able to provide the same quality and diversity of programming to OVS customers that such programmers are now providing to cable subscribers. Simple interconnection will not guarantee that the public will continue to benefit from PEG

programming and is not consistent with the 1996 Act's requirements that PEG obligations on OVS operators be no greater or lesser than those for cable operators.

Additionally, in response to the Commission's inquiry regarding whether the 1996 Act's OVS PEG requirements might be met by the OVS operator "sharing with the cable operator the capital and operating expenses related to PEG channels"¹, the City believes that such an arrangement could result in PEG obligations being halved, not duplicated as intended by Congress. Consequently, such a sharing arrangement might constitute an unlawful reduction of critical franchise obligations on the part of the cable operator. This does not, however, mean that the City is in favor of unnecessary duplication. Rather, the City believes that the FCC's OVS rules must include the concept of equivalent obligations. For example, when it is clear that facilities or equipment different from that provided by the cable operator; maintenance of existing equipment; or monetary support in lieu of facilities and equipment are needed to support the provision of PEG services over OVS systems, such equivalent obligations should be allowed as long as they, in sum total, are no greater or lesser than those obligations imposed on incumbent cable operators. Discussions between local franchising authorities and OVS operators may be needed to properly define and agree on such equivalent obligations. Therefore, the Commission's OVS rules should incorporate a provision that enables such discussions and subsequent agreements to occur.

PEG access is also only properly facilitated if the OVS operator's PEG requirements continue to be consistent with those of the incumbent cable operator even as capacity, facility, equipment and funding provisions may be upgraded as part of a cable television franchise renewal. It is important to note that PEG obligations stemming from a franchise

¹ See OVS NPRM at 57.

renewal are founded on the existing and future PEG-related needs of the entire community as ascertained by the franchising authority based upon extensive input from the community. Therefore, such needs would apply to all members of the community, including those that subscribe to OVS systems rather than the incumbent cable provider. In light of this, the Commission must ensure in its rules that expansion capacity is available on the OVS system for the addition of new PEG services when such services are added on the cable provider's system.

Regarding channel positioning, the FCC's OVS implementation rules should enable PEG programmers to telecast their services such that they are received by the subscriber on the same channel for the OVS system as for the cable system. PEG programmers have typically spent significant time, energy and monetary resources in establishing a channel identity such that their PEG channel positions are easy to find and remember. Since the programming on these channels is inherently designed to serve the public interest, it would be inconsistent with the public interest to make them more difficult to locate on the OVS system. As the Commission has noted in the OVS NPRM, technologies such as channel mapping could provide ready technical solutions to this problem.

B. PEG Services Should Be Provided To All Subscribers To The OVS System Regardless Of The Other Programming That They Receive

As the Commission is aware, Congress has continually reaffirmed the importance of PEG channels stating in one such instance that requirements for PEG channels enable "a wide diversity of information sources for the public -- the fundamental goal of the First Amendment."² Accordingly, it would be contrary to longstanding Congressional intent and,

² See House of Representatives Report No. 934, 98th Congress, Second Session at 30 (1984).

indeed, inconsistent with the goals of the First Amendment to develop rules that did not provide PEG programming to all subscribers to the OVS system, not just those that subscribe to the network operator's or its affiliate's programming service. In this regard, a tier of PEG services could be established, such that they are automatically provided to any OVS service subscriber.

This issue raises a critical companion point concerning information provided to subscribers by the OVS operator. The Commission's charge from Congress is to ensure that television broadcast stations and other unaffiliated video programming services are included in any navigational device, guide or menu. This means that the Commission must ensure that PEG services are included, and are easily identifiable, as part of any system navigational devices. Such an action will serve to increase the awareness of OVS subscribers of the diversity of public interest programming that is available on the system.

C. Cable Operators Should Not Be Allowed To Convert Their Cable Systems Into OVS

As the Commission notes, Congress' clear intent is that OVS assist in introducing vigorous competition in entertainment and information markets in both an intersystem and intrasystem manner.³ If cable operators are allowed by the Commission to convert their systems into OVS, it is certain that intersystem competition would be decreased, not increased. Even intrasystem competition could be impeded because additional transmission platforms conceivably would not be established until after it was demonstrated that the incumbent's available bandwidth was insufficient to meet demand. Additionally, regardless

³ See OVS NPRM at 6 and 10.

of the safeguards, the potential for anti-competitive actions by an incumbent increases if it is "the only wire in town."

The City firmly believes that Congress' goal of vigorous competition will not be achieved unless there is a balancing of intersystem and intrasystem competition. Allowing cable operators to convert existing systems into OVS will tip the scales away from intersystem competition and thus not achieve the Congressional goal. Additionally, such an action by the FCC could serve to unlawfully impair existing franchise agreements, and inhibit the development of existing and future cable services as part of franchise renewals to meet existing and future community needs and interests. Such an action by the Commission, then, would be distinctly contrary to the public interest.

D. Local Governments Must Have A Role In The OVS Certification Process To Ensure That Local Communication Requirements Are Met

While the City understands the significant time constraints placed on the Commission to approve or deny OVS certifications, the City believes that it must have a role in the certification process to ensure that a local, Denver OVS provider will meet its PEG obligations under the 1996 Act. It is unlikely that the FCC will be able to certify that such obligations have been met for literally thousands of franchises without local government review and input. This is especially true where PEG requirements may be equivalent to, rather than duplicative of, certain cable operator obligations.

One appropriate way to gain local input, as the Commission has suggested, would be to require the filing of certain information as a prerequisite to the filing of a request for certification. This information could include documentation detailing how PEG requirements will be met by a certain OVS operator, and a statement from local authorities

that analyzes whether the stipulated PEG obligations would be consistent with or equivalent to those provided by the incumbent cable operator.

E. System Technical Considerations Should Neither Prohibit Access For Existing Services Nor Inhibit Development Of Future Services

The City is significantly concerned that certain types of PEG services may not be able to be satisfactorily delivered to subscribers, either at this time or in the future, unless both analog and digital capacity is set aside for PEG services. This would include everything from interactive video subscriber services to computer-based training and other data communication services. Such services are currently facilitated through the use of both upstream and downstream capacity on subscriber networks; upstream and downstream capacity on institutional networks; or the use of hybrid subscriber network-institutional network links that take advantage of crossovers between the two networks.

It is important to note, that educational and governmental service requirements that are part of institutional networks are provided for in Section 611 of the amended Communications Act of 1934 and, therefore, the FCC's rules must also provide for the implementation of these services on OVS. Additionally, the City believes that the Commission must enable capacity for PEG services to be stipulated in bandwidth and not necessarily in channels. This would inherently allow for the expansion of services facilitated by the introduction of digital compression or digital switching, such that a set amount of bandwidth could be used to expand the number of services provided as such services are moved from an analog to a digital format.

The City additionally believes that provision must be made to extend the FCC's Emergency Alert System ("EAS") requirements and local emergency override requirements


to OVS. Clearly, since such requirements facilitate the quickest possible notification to the subscribing public of potentially life-threatening emergency situations, not extending such obligations could significantly harm a large portion of the citizenry.

III. CONCLUSION

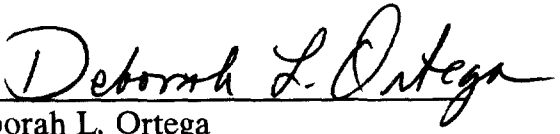
In summary, the City firmly believes that Congress' public interest and program diversity goals for Open Video Systems will not be met unless the FCC incorporates the following principles into its OVS rules:

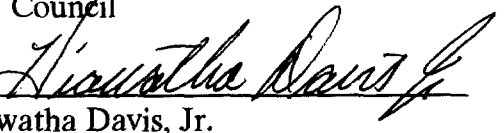
- OVS operators should provide existing and future PEG capacity, facilities, equipment and operational support that is the same as, or equivalent to, that provided by incumbent cable operators.
- PEG services should be provided to all subscribers to the OVS system regardless of the other programming that they receive.
- Cable operators should not be allowed to convert their cable systems into OVS.
- Local governments must have a role in the OVS certification process to ensure that local communication requirements are met.
- System technical considerations should neither prohibit access for existing services nor inhibit development of future services.

Respectfully Submitted,

By: 
Alonzo Matthews
Manager
General Services Administration

City and County of Denver
1330 Fox Street
2nd Floor
Denver, CO 80204

By: 
Deborah L. Ortega
President
City Council

By: 
Hiawatha Davis, Jr.
City Councilman and
Vice Chair, Special Projects Committee

City and County of Denver
City and County Building
Denver, CO 80202